

NEWSLETTER

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SPECIAL POINTS OF INTEREST:

- Order Terminating Reunification is not final order
- Division must maintain funds to avoid/prevent removal
- Practice Guidelines constitute "fair and serious" attempts for reunification.

PRACTICE GUIDELINES: REASONABLE EFFORTS TO KEEP CHILDREN IN THEIR HOMES

"Reasonable efforts" means a "fair and serious attempt." In the Interest of J.C., 2004 UT App 255 ¶14, 97 P.3d 706. Parents in Utah can expect that DCFS's "fair and serious attempt" be demonstrated by adherence to its adopted policies and procedure or that the worker be able to articulate reasons for deviation from them. See, e.g. In re Arvonick, 2002 UT 71 ¶12, 52 P.3d 1246 (deviations from rules and procedures not to be arbitrary or unfair).

The Practice Model and DCFS Practice Guidelines establishes expectations of behavior; CPS workers are expected to follow the guidelines in the intake of suspected incidences of abuse, and in the investigation of referrals; Caseworkers receive training in the Practice Model and Guidelines and they are expected to adhere to the practices adopted by DCFS.

Just what conduct should parents expect from caseworkers as part of their "fair and serious attempt" to make reasonable efforts to keep children in their homes and keep families intact?

DCFS purports to believe that children should remain with their own families whenever possible. DCFS Practice Guidelines, 100.2. Home and community-based family preservation and support services "use least intrusive, solution focused interventions to promote the safety and well-being of children and families." Id. Home and community-based family preservation and support services preserve the family unit within the home and ensure and enhance safety within the home. Id.

Voluntary, brief services, lasting 30 to 90 days or longer if necessary, should be used to reduce risks and develop family support systems outside of

DCFS. Id. At 101.2. It is reasonable, then, to expect that before DCFS remove children from their home, they determine whether family preservation services will meet the concerns identified by the Division.

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AN ORDER TERMINATING REUNIFICATION AND CHANGING THE PRIMARY PERMANENCY GOAL IS NOT FINAL, APPEALABLE ORDER AND JUDGMENT

On May 18, 2006, the Court of Appeals decided C.M.F. v State, 2006 UT App 200, holding that an order issuing from the permanency hearing terminating reunification and changing the reunification goal is not a final, appealable order.

In August 2004, a newborn was removed from his mother and found to be an abused and neglected child. The juvenile

court ordered reunification. Eight months later, the court terminated reunification and changed the primary reunification goal to "adoption." Mother appealed from that order. The Court of Appeals held that it lacked jurisdiction to consider the appeal.

Parties may appeal from "all final orders and judgments." Utah R. App. P. 3(a). In child

welfare proceedings, an appeal may be taken from more than one final judgment. In re S.A.K., 2003 UT App 87, (jurisdiction to hear appeal of a ruling during the adjudication hearing).

A final, appealable order, is one that "ends the current juvenile proceedings, leaving no question open for further judicial

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AN ORDER TERMINATING REUNIFICATION AND CHANGING THE PRIMARY PERMANENCY GOAL IS NOT FINAL, APPEALABLE ORDER AND JUDGMENT

action.” *C.M.F. v State*, 2006 UT App 200, ¶9, citing *In re H.J.*, 1999 Ut App 238, 986 P.2d 115.

The determination of whether a permanency order is final and appealable turns on the “substance and effect” of that order. *Id.* (citations omitted). According to the Court, “because we focus on the substance of the order, the occasional permanency order will in fact be final and appealable.” *Id.* The only arguably “final” action in the instant case is the permanent termination of reunification services. *Id.*

Caution must be exercised in accepting the State’s mere motion for a finding of reasonable efforts without making a record of those efforts. When DCFS seeks services at the dispositional hearing, are those services readily available in the community? If

services are not readily available, how will DCFS ensure that the services are made available to the parents? Once the court orders services, has DCFS developed a service plan consistent with the orders? What has the caseworker done to “arrange, refer, provide” services ordered by the court? Did the caseworker simply hand the parent a preprinted “list” of providers and send them out the door? Does the parent have transportation to services? Are services provided during hours that do not jeopardize the parent’s job? What efforts did DCFS make to assist the family to engage and complete services?

According to the Court of Appeals, one of the reasons for finding that the permanency determination is not a final order is the fact that the reasonable efforts made by the Division is an issue ad-

dressed at a termination trial. Attorneys with any experience with termination proceedings, however, understand that any serious challenge to reasonable efforts at the termination stage is difficult at best, particularly if the court has previously found that the Division has made reasonable efforts..

The absence of appellate oversight of most permanency decisions warrants attention by counsel to ascertain the Division’s reasonable efforts throughout the child welfare proceedings. A family plan or service plan should set out performance expectations of the Division as well as parents. Just as the Division is quick to point out deficiencies in the parents performance at review hearing, parents need to be prepared to point out deficiencies in the Division’s performance.



“The determination of whether a permanency order is final and appealable turns on the “substance and effect” of that order. “

PRACTICE GUIDELINES: PLACEMENT PREVENTION/DISRUPTION FUNDS

Child and Family Services must maintain placement prevention/disruption (“PP/D”) funds for the purpose of assisting families to meet immediate financial needs, individualizing the family plans, or accessing specialized services when meeting the identified needs that will directly contribute to the goal of maintaining children in their homes. DCFS Practice Guidelines, 706.2, Philosophy and Purpose of Placement Prevention/Disruption Funds.

Placement Prevention/Disruption Funds are uncom-

mitted funds which are “available and easily accessible” to caseworkers and family team **at the case level.** *Id.*

The purpose of the PP/D fund is to promote the strengths-based needs-based individualized approach to practice to implement wrap around services for families. *Id.*

The Division recognizes that the only effective way to customize services for many families is to create new services “one child or family at a time.” *Id.*

Caseworkers may intervene to prevent removal or placement disruption to provide allowable services not exceeding \$500. Allowable services include rent, housing deposits, utility deposits, utility bills, automobile repairs, gasoline, food, clothing, child care supplies, household supplies, child day care, homemaker services, interpreters, psychotherapy for child and parents, psychological testing, drug screening for child/parents, education fees, doctor visits, transportation for educational or

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PRACTICE GUIDELINES: PLACEMENT PREVENTION/DISRUPTION FUNDS

Medical services, special short term counseling or treatment not otherwise available through contract. Other services may be obtained, however, payment must be pre-approved by the regional director. DCFS Practice Guidelines, 706.2, Philosophy and Purpose of Placement Prevention/Disruption Funds.

Funding is available to stabilize a family or to eliminate

the need for a child to be brought into DCFS custody. Id.

Funds are available to assist in reunification of a child with parents and provide for family treatment needs. Id.

The use of PP/D funds is intended to benefit as many children and families as possible. The funds are not intended as a reoccurring form of family support but are

intended to be single interventions to **prevent placement or placement disruption, to stabilize a family crisis, and to save additional expense resulting from change in placement.** Id.

The reasonable efforts inquiry at shelter should include assessment of the Division's use of PP/D funds to avoid removal. Make the inquiry part of the shelter record.



PRACTICE GUIDELINES: REASONABLE EFFORTS TO KEEP CHILDREN IN THEIR HOMES

Counsel should inquire of the Division as to the nature of the efforts to maintain children in the home and should expect DCFS to be able to articulate in terms other than "we have concerns" as to just why the family cannot remain intact with appropriate services.

Options for DCFS include the creation of a family team. DCFS Practice Guidelines, 103.3. The caseworker must complete a risk assessment for every family prior to developing the family plan. Id. At 104.1 The purpose of the risk assessment is to help families realize their strengths and needs. Id. The caseworker shall also complete a functional assessment before development of the family plan. Id. At 104.2. Services are based upon the family's strengths and needs. Id. At 104.4

The level of service intensity to maintain and child and family safely is to be assessed on an ongoing basis. Id. When determining the level of intensity, the worker should consider the degree of risk to the child, the family's schedule, the needed frequency and duration of contacts with the family, the amount of time needed for case management activities, whether clinical service is needed, and, the extent of services to be provided. Id. At 104.4. **If the child is at imminent risk of removal from the home but can be maintained safely in the home with intensive services, the family will be provided with intensive family preservation services.** Id. The worker will visit the home more frequently in times of crisis to help resolve family problems. Id. Visits should be flexible to accommodate

the needs of the family and should not be restricted to business hours. Id.

DCFS practice guidelines for maintaining children in the home provide fertile ground for inquiry of the Division worker at shelter. Ask the Division to provide counsel with a copy of the Risk Assessment. What risks are identified? Once the risks are identified, what steps can be done to address the risks? Will family preservation services be helpful? If not, why not? Ask to see the functional assessment. What are the family's strengths and weaknesses? How can the strengths be utilized to maintain the child in the home? What services are needed to address the weakness? If removal is sought, expect the worker to articulate the reasons why services will not address the weaknesses.

DCFS values
"the unique
strengths and
resources in
each family"
*DCFS Practice
Guidelines,
100.2*



Visit the Utah Website:
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"It does not take a majority to prevail...but rather an irate, tireless minority, keen on setting brushfires of freedom in the minds of men."

-Samuel Adams

**PRACTICE GUIDELINE: WRAP AROUND
SERVICES**

Wrap around services are services provided to the child and family based on the needs of the child and family as determined by the functional assessment, and not limited to the services that are immediately available. [DCFS Practice Guidelines, 107.](#)

The child and family team must explore with the family the level of services to be provided and the use of flexible funding to craft and meet the needs of the family. Id. At 304.4. Services include peer parenting, child care,

home health aide services, parenting education, respite care, transportation services for visitation, vocational or educational assistance, mental health and/or substance abuse assessment and treatment, housing referral and assistance.

Remember that flexible funding must be utilized to meet the individual needs of the family.

Please remember that it is not the intention of this Newsletter to be an all-inclusive practice guide for attorneys. Rather, the intent is to stimulate discussion and further research into the Practice Model principles and guidelines, and its use in the representation of parents and families involved in our child welfare system.